

Town of Frederick Board of Trustees



Eric Doering, Mayor

Sue Wedel, Mayor Pro Tem
Liberta Hattel, Trustee
Amy Schiers, Trustee

Tony Carey, Trustee
Gerry Pfirsch, Trustee
Jim Wollack, Trustee

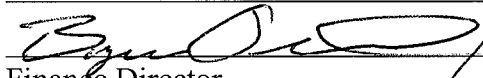
AM 2009-082

Amendment to Article 4 of the Frederick Land Use Code, Regarding Form of Required Improvement Guarantee for Construction of Public Improvements

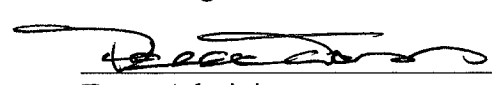
Agenda Date: Town Board Meeting - September 8, 2009

Attachments: a. Ordinance

Fiscal Note: None noted

 Assistant Finance Dir.
Finance Director

Submitted by: Richard L. Leffler, P.E. 
Town Engineer

Approved for Presentation: 
Town Administrator

AV Use Anticipated Projector _____ Laptop _____

Certification of Board Approval:

Town Clerk

Date

Summary Statement:

Request to approve amendment to Art. 4 of Land Use Code to increase the level of improvement guarantee required from developers to secure performance of public improvements.

Detail of Issue/Request:

As directed by the Town Board, the Engineering Department has reviewed the level of improvement guarantee required by the Land Use Code to ensure that the required amount is adequate to cover the repair/replacement/completion costs associated with public improvements that may be required for a project under the current form MOAPI. Currently, the Code requires an improvement guarantee from a developer in the amount of 10% of the estimated costs of public improvements, as described in the MOAPI. However, the 10% guarantee in one recent instance has proven not to be enough to complete a project as approved. This modest guarantee arguably fails to provide a sufficient incentive for

developers not to walk away from a project when market conditions challenge the developers' ability to complete a project as approved.

In order to close the gap on repair/replacement/completion costs for public improvements, and to further encourage developers to complete projects as designed and approved, the improvement guarantee (warranty) requirements of the Land Use Code should be increased. Setting the required guarantee amount at 100% of the estimated costs of improvements addresses both issues, by placing the Town in the best position to complete a project using the guarantee funds and by placing a higher burden on a defaulting developer, thus discouraging default.

Section 4.9 1.(b) and 1.(d) of the Land Use Code establish the required improvement guarantee (warranty) amount and at what stage in the process such guarantee is required. Increasing the amount of required guarantee would not interfere with the Town's partial release of an improvement guarantee as a project moves through its development phases or the standard retention of 10% of the improvement costs during the 2-year warranty period following acceptance of the public improvements.

Legal/Political Considerations:

The current 10% guarantee sets a low threshold for getting into development in Frederick; increasing this amount may turn away some potential developers. Neighboring towns, including Johnstown, Ft. Lupton, Firestone, Erie and Dacono, are at or above 100% guarantees with some as high as 125%. In the area, only Greeley and Milliken are under the 100% mark. The mean rate adopted in the area is 115%, with the average at 83% (though none require this exact amount).

There are incident costs associated with providing a guarantee depending on the form a developer chooses (letter of credit, cash, bond)-- the higher the guarantee's denomination, the greater the incident costs. In addition, the current system enables the Town to hold improvement guarantees in their initial amounts throughout development/warranty periods, increasing the guarantee amount may result in more developers seeking partial releases of their guarantees as development progresses.

Alternatives/Options:

Rather than increasing the improvement guarantee amount to 100% of the estimated costs for public improvements, another level between 10 and 100% (e.g., 80-90%) could be set that may better balance the interest of the Town in encouraging development and the public in having public improvements completed as promised by developers and as described in plans approved by the Town.

Financial Considerations:

There will likely be an administrative expense to the Town to process partial release requests as development projects move through their phases, as developers will want to reduce bank costs associated with holding guarantees at the 100% level. These costs can be passed on to the developers as part of the land use approval process.

Staff Recommendation:

Approval of the proposed amendments to Subsections 4.9. 1.b.(3)(m)(i), 4.9. 1.b.(3)(o), and 4.9. 1.d.(4) of the Frederick Land Use Code, 2004 to increase the amount of improvement guarantee a developer is required to provide to secure performance of the public improvements associated with a land use project.